

1 Hon. Richard A. Jones  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ORLANDO OLAIS-ROCHA,

14 Defendant.

15 No. CR11-159RAJ

16 ORDER DENYING MOTION FOR  
17 REDUCTION OF SENTENCE

18 **I. INTRODUCTION**

19 This matter comes before the court on Defendant Orlando Olais-Rocha's *pro se*  
20 motion requesting a reduction in his sentence under 18 U.S.C. § 3582(c)(2), based  
21 on Amendments 782 and 788 to the United States Sentencing Guidelines ("USSG")  
22 (Dkt. #513). Plaintiff United States of America opposes the motion (Dkt. #528).  
23 The court has thoroughly considered the parties' briefing, the relevant record, and  
24 the applicable law. Being fully advised,<sup>1</sup> the court DENIES Mr. Olais-Rocha's  
25 motion for the reasons stated below.

26 **II. BACKGROUND**

27 Defendant Orlando Olais-Rocha was sentenced by this court on September 7,  
28 2012, following his plea of guilty to conspiracy to distribute controlled substances,

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conspiracy to engage in money laundering, and possession of a firearm in furtherance of a drug trafficking crime.

The amount of methamphetamine and heroin involved in Defendant's offense was equivalent to 89,000 kilograms of marijuana. Based on the 2011 edition of the Sentencing Guidelines, applicable to the date of the offenses, the appropriate Base Offense Level for the drug offense was 38. USSG § 2D1.1(c)(1). Pursuant to various enhancement provisions of USSG § 2D1.1, Defendant was then assessed upward adjustments related to the drug offense for: importation of methamphetamine; maintaining premises for the purpose of distributing controlled substances; employing a pregnant person in the distribution of controlled substances; and leadership. This resulted in an adjusted offense level of 48 for the drug offense. Defendant's money laundering conviction added a 2-level enhancement, and then Defendant was awarded full credit for acceptance of responsibility, resulting in an offense level subtotal of Level 47.

The sentencing table at USSG Ch. 5 Pt. A only goes up to Level 43, but the commentary directs that “[a]n offense level of more than 43 is to be treated as an offense level of 43.” At Total Offense Level 43 and Criminal History Category I, Defendant’s resulting sentencing range was life, plus 60 months consecutive for the gun offense. This is the sentencing range adopted by the court. The court then varied downward from that range pursuant to the parties’ negotiated recommendation in the Plea Agreement and imposed a sentence of 144 months’ imprisonment for the drug and money laundering offenses, concurrent, plus 60 months consecutive for the gun offense, for a total sentence of imprisonment of 204 months.

### III. DISCUSSION

## A. Legal Standard

Amendment 782 to the United States Sentencing Guidelines, which became effective November 1, 2014, lowered the penalties for most drug offenses by

1 reducing most base offense levels contained in the USSG § 2D1.1 Drug Quantity  
 2 Table by two levels, and making other related adjustments to this Guideline. Along  
 3 with Amendment 782, the Sentencing Commission adopted Amendment 788, which  
 4 decreed that Amendment 782 may be applied retroactively to lower the sentences of  
 5 previously sentenced inmates. At issue in the instant motion is whether this court has  
 6 authority to reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

7 In order to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two  
 8 conditions must be met: (1) the Defendant must have been sentenced to a term of  
 9 imprisonment based on a sentencing range that has been lowered by a retroactively  
 10 applicable Guidelines amendment; and (2) the sentence reduction sought must be  
 11 consistent with the Sentencing Commission's applicable policy statements. *United*  
 12 *States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). A district court  
 13 does not have jurisdiction to reduce the Defendant's sentence unless both criteria are  
 14 met. *See United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

## 15           **B. Defendant's Motion**

16 Following passage of the recent amendments to USSG § 2D1.1, Defendant's  
 17 applicable sentencing range for the combined drug and money laundering offenses  
 18 has not been reduced; it remains life. This is because even though his base offense  
 19 level is reduced from Level 38 to Level 36, and, leaving all other adjustments in  
 20 place, his new offense level subtotal is correspondingly reduced from Level 47 to  
 21 Level 45, this still exceeds the high end of the Sentencing Table. Accordingly, his  
 22 newly-reduced offense level subtotal continues to be treated as Level 43, as directed  
 23 by USSG Ch. 5, Pt. A, comment. n. 2. Accordingly, neither his applicable Total  
 24 Offense Level nor his corresponding sentencing range has been reduced by the  
 25 amendments.

26           Section 1B1.10 explicitly directs: "the court shall substitute only the  
 amendments listed in subsection (d) for the corresponding guideline provisions that

were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.” USSG § 1B1.10 (b)(1). When this is done, Defendant’s applicable sentencing range is not reduced. Accordingly, Defendant’s sentencing range has not been lowered by a retroactively applicable Guidelines amendment, and the district court lacks jurisdiction to reduce the defendant’s sentence. *Wesson*, 583 F.3d at 730.

#### IV. CONCLUSION

For the above reasons, Defendant Orlando Olais-Rocha's *pro se* Motion to Reduce Sentence (Dkt. #513) is DENIED.

DATED this 8<sup>th</sup> day of June, 2015.

*Richard A. Jones*  
The Honorable Richard A. Jones  
United States District Judge